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Bidders on NextWave Spectrum Want \$3.2B in Deposits Back

By Paul Kirby

Wireless carriers have asked the FCC to refund more than \$3.2 billion in down payments they made for spectrum reclaimed from NextWave Telecom, Inc., and another bankrupt company. The FCC has held their payments in a non-interest-bearing account for as long as 14 months. The companies say the lost interest amounts to at least \$140 million so far and will continue to mount at a rate of more than \$3 million a week.

In a joint filing Jan. 4, the 13 carriers cited uncertainty over whether they would ever gain access to NextWave's spectrum. They pointed to Congress's failure last month to approve legislation implementing a settlement of the dispute over NextWave's "C" and "F" block PCS (personal communications service) licenses.

Under that settlement, NextWave would have relinquished its licenses and walked away with about \$5.8 billion. Carriers that bid on NextWave's spectrum at an auction last year would pay the \$15.85 billion they pledged, while the U.S. Treasury would get about \$10 billion. But the accord expired Dec. 31, 2001, because Congress didn't pass the legislation.

"Consequently, the Auction No. 35 winners now face an indefinite period of time before there is any prospect that the Commission could lawfully provide them with the NextWave licenses that they won," the carriers said. "Any further delay in returning these funds not only continues to cost the Auction No. 35 winners millions of dollars each week, but also requires them to forgo other actions to initiate, expand, or improve service to their customers."

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Citing "the irreparable harm that is being suffered daily," the carriers asked the FCC to refund by Jan. 18 the more than \$3.1 billion in down payments made for 197 licenses that cover NextWave's spectrum.

The carriers also asked the FCC to refund more than \$93 million in down payments submitted by seven companies for 41 licenses previously held by Urban Comm-North Carolina, Inc., another bankrupt carrier that is separately seeking to settle its case with the FCC.

The FCC has held about one-third of the money paid for the spectrum reclaimed from both NextWave and Urban Comm since November 2000, while the rest has been held since February 2001.

In asking for the refund, the carriers noted that the FCC assured bidders before the auction that they would get their down payments back if licenses they bid on were "unavailable due to a subsequent court action."

The U.S. Court of Appeals in Washington ruled last summer that the FCC violated the U.S. Bankruptcy Code when it reclaimed NextWave's licenses. It subsequently returned the licenses but has asked the U.S. Supreme Court to review the lower court's ruling.

In their filing, the carriers also cited recent congressional testimony of FCC Chairman Michael K. Powell in which he said that even if the agency prevailed in the courts, the NextWave case might not be resolved for years. "Such delay is unreasonable in these circumstances," the carriers said. "The statute and the regulations governing spectrum auctions expressly contemplates that licenses will be granted expeditiously after the close of an auction, not three or four years later."

The carriers added, "For the Commission to delay the return of the Auction No. 35 winners' down payments on the NextWave licenses until it obtains the authority to issue those licenses to the Auction No. 35 winners—or until it has pursued all conceivable legal challenges—would severely compromise the willingness of carriers to bid on reclaimed spectrum in future auctions."

Seeking a refund are Verizon Wireless, Alaska Native Wireless LLC, Salmon PCS LLC,

DCC PCS, Inc., Cook Inlet/VIS GSM V PCS LLC, VoiceStream PCS BTA I License Corp., Leap Wireless International, Inc., SVC BidCo. LP, Lafayette Communications Co. LLC, Northcoast Communications LLC, 3DL Wireless LLC, MCG PCS II, Inc., and 3G PCS LLC. An FCC spokeswoman said agency officials were reviewing the carriers' request.

Proponents Gauge Support

The decision by carriers to ask for a refund of their down payments doesn't necessarily mean there's no chance of working out a settlement to resolve the dispute over NextWave's licenses, sources said.

Prosettlement forces are continuing to gauge whether there could be enough congressional support to pass legislation implementing a settlement, they say. But some insiders aren't optimistic. "I think it's done," one industry source said of the chances for a settlement's being implemented.

While some House leaders worked to push the legislation through last month, two powerful senators opposed any action by lawmakers in the final days before Congress adjourned. Sens. Ernest F. Hollings (D., S.C.) and John R. McCain (Ariz.), the chairman and top Republican on the Senate Commerce, Science, and Transportation Committee, said they needed more time to analyze the agreement. Sen. Hollings has promised to hold hearings on the accord in February. Congress returns Jan. 23.

While carriers are "still very much interested" in getting legislation passed, "they don't want to put all their eggs in the basket of the settlement," one source said. "That's one reason they're asking for the down payments back." In addition to pursuing a court remedy of the NextWave case, carriers may try to acquire additional spectrum through other means, the source noted. The industry executive

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pointed out that some carriers might try to reach agreements directly with NextWave to gain access to the company's licenses.

In their filing with the FCC, the carriers said refunding the deposits would "free up those funds for productive, customer-benefitting uses, thereby mitigating the burdens the Auction No. 35 winners will face if settlement talks are reinstated."

Representatives of carriers that signed the settlement discussed the settlement prospects and the option of seeking refunds Jan. 3. But any further talks probably will occur without the "significant involvement" of the FCC, Mr. Powell told *TRW*. Mr. Powell defended the settlement but acknowledged that auction bidders have "huge opportunity costs" and "cannot and will not sit around forever waiting to pay . . . for spectrum that they can't use."

TRW Interview

Powell: 'Biggest' Problem Is Spectrum Management

FCC Chairman Michael K. Powell has set an ambitious agenda for the Commission in 2002. In his first interview of the new year, Chairman Powell sat down with TRW Jan. 3 and discussed his views on a variety of issues, including spectrum policy.

He suggested that pressures from new technologies and ever-increasing demand for spectrum ensure that current spectrum-management schemes can't last another decade. He also addressed the next steps in the long-running fight over NextWave Telecom, Inc.'s "C" and "F" block PCS (personal communications service) licenses. An edited transcript of the conversation follows.

TRW: Can you talk a little bit about your plans for addressing spectrum-interference issues?

Powell: Spectrum is the biggest unsolved problem on the horizon. . . . The tetherless wireless world, I continue to believe, has only barely been tapped. And we're starting to have the kinds of maturity in the science and physics of spectrum and computing power. . . . All kinds of things are just crying out to be wireless, whether it's Bluetooth eliminating the need for a wire from a computer to a printer or having a cellphone that can also be a Palm Pilot. It is just crying out to grow.

But spectrum is a terribly difficult resource to manage because, for one thing, it's government-allocated, often for specific uses. The interference science is sometimes understood, but often new and novel. And there just isn't enough [spectrum] to go around, and I will argue, there never will be. Demand always outstrips supply.

At the same time, because we don't have property rights in the spectrum, we're vested with the responsibility of protecting the fair use of it. If you buy it, you don't want to be sending your signal and getting tramped on without any recourse.

There are just thousands of issues that are really fundamental, like how do you allocate spectrum? Using auctions, leasing, secondary markets? And then how do you work on the technical sciences of interference? Can you share? It used to be [that] you never shared. You rarely would let somebody be in your spectrum.

But I think the technology is increasingly teaching us ways to let people share and coordinate as well as having the devices themselves get smarter so that they can pick up on problems and adjust. There's software-defined radio, where you can move frequencies dynamically, spectrum-hopping technologies, ultrawideband technology, which is just remarkable and so completely contrary to most radiation principles.

We have to be doing more than just being a referee between fights among the big indus-



Michael K. Powell

tries. We have to find a better way so that they all prosper. We could go on forever, arbitrating fights. Maybe we need to start to figure out that the way we do this doesn't really work very well. Maybe we need to introduce a new way of thinking about spectrum and allocating it, reclaiming it and moving it around, protecting against interference.

Those ideas are wide-ranging. I'm not totally committed to one just yet. But on the far end, people say, wouldn't it be great if a [spectrum] license was just [like] a driver's license? It has technical limitations, but if you don't break them, you can do whatever you want with it. We don't really care if you provide broadband service or video. We don't really care if you keep it or if you sell it. We don't really care as long as you don't interfere. That would be an entirely different regime.

But what happens now? You know the story, right? In the early '80s we loved digital TV so much that we took a huge [block of spectrum] and gave it to these guys for free. It's a value judgment. At that time in history, TV looked like the coolest thing you could give the spectrum for.

A funny thing happened on the way to the arena. Suddenly there are all these other things, and then we bemoan that the spectrum's encumbered. But it's so absolutely encumbered because it's allocated only for broadcasting, only for incumbent broadcasters, only for digital transition.

Then we get into this massive industrial policy of banging on parts of the market to do what we told them because we gave them this spectrum for a specific purpose. And those pressures become even greater when somebody else is clamoring for it and says, "If he won't make use of it, I will. Give it back to me."

And we're constantly in the middle of this mess, picking winners and losers. Whether we want to admit it or not, that's what we're doing. . . . That's not going to survive for another decade.

TRW: What do you see as the next step in the fight over spectrum held by NextWave?

Powell: As we sit here today, I think it's very, very cloudy. I understand all the reasons

[the settlement agreement] didn't get through Congress. But I continue to stand very firmly believing there's a very powerful and persuasive story why that was a way to wrap up a pretty big mess once and for all.

I'm not one that was particularly thrilled that [NextWave was] going to get money either, but I couldn't let that blind me to the bigger public interest of getting the spectrum into the market, something we just talked about, and getting the government its money.

I'll tell you the first place we go from here, as far as the FCC is concerned. Congress may come back and want to take it up—I don't know if the companies would be willing to do that or not—but the FCC is going to have to go back to being a litigator principally.

We have a case in the Supreme Court, and there are reply briefs due this month. Time doesn't stand still. I still believe settlement was and is, though a messy course, the best one for everybody involved. But it's not the only one, and we'll go back to muddling through what we were muddling through before, which is [that] the licenses are encumbered.

They're ensnared in a bankruptcy proceeding. There's an appellate case in the Supreme Court. There's a pending case in the [U.S. Court of Appeals for the] 10th Circuit. If we stay on the litigation course, we'll probably still be here three years or four years. . . .

I'll tell you right now, even if we win in the Supreme Court, we're talking about three or four years from now [before it's resolved]. Even if you win, you're going to get a remand in the [U.S. Court of Appeals for the] D.C. Circuit, because the D.C. Circuit had about 10 issues and only ruled on one because it was conclusive. So the [Supreme Court is] going to say, "You're wrong about that, but now go look at the other issues."

The reaction winners, who paid a whole lot of money at auction, have huge opportunity costs. They cannot and will not sit around forever hoping to pay a . . . bill for spectrum that they can't use. . . .

I don't know that most of them, as an honest business decision, can sit idly by for years, particularly when the spectrum value fluctu-

ates. . . . Ultimately, if this [settlement] falls apart and they get out, well, at least [they'll have escaped] from a pretty huge expense. And what's going to happen? The spectrum is public property. It will get auctioned again some day, and they'll be back.

But back to your question, my best judgment is there will be some exploration among the companies, probably without our significant involvement, about whether they want to or can possibly stay the course for some period longer in hopes of seeing whether Con-

gress returns and takes the matter up. As far as the FCC is concerned, Congress, within its rights, didn't endorse it in that time frame. We principally now have to look to what our litigation options are.

The other thing that people forget is that there's a bankruptcy proceeding going on. The judge has kept things at bay waiting to see whether this got resolved. If it doesn't, he's going to back settling the estate.

—*Brian D. Hammond and Edward M. Rovetto*

TRW Commentary

FCC Mandates on Industry Out of Sync with Marketplace

By *Steve Pastorkovich*

Government usually works slowly and therefore has to scramble to keep up with technological changes—especially in the fast-evolving telecommunications sector. Yet now Washington is pressuring the wireless industry to implement new technologies.

This situation is all the more ironic because of how quickly the wireless industry has grown, partly because wireless carriers have often been subject to fewer regulatory burdens than those in other portions of the telecom sector.

Thomas J. Sugrue, chief of the FCC's Wireless Telecommunications Bureau, was subjected to a barrage of questions on Capitol Hill during a recent hearing regarding deployment of Phase II enhanced "911" (E911) services.

Several senators criticized the pace of Phase II implementation. Their mood was not improved by the FCC's decision to allow six large wireless carriers to delay rolling out Phase II, which was supposed to begin Oct. 1, 2001. The Commission also extended the deadline for small and midsize carriers to apply for Phase II waivers.

Despite the misgivings of legislators, the FCC's actions regarding Phase II deployment

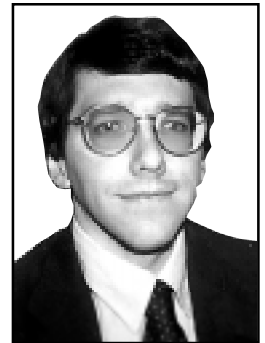
made sense. The requirements and deadlines of Phase II were established before the technology to implement it was even commercially available.

Carriers have had trouble pinning down when they could comply with the deployment deadlines, because hardware and software manufacturers have experienced technical complications. Furthermore, many of the local jurisdictions that answer "911" calls lack the funding to deploy new location technology.

FCC Chairman Michael K. Powell, responding to letters from several House members, has noted that Congress might consider providing financial assistance to localities facing this issue.

In this case, manufacturers have been asked to develop the hardware and software needed for carriers to comply with the FCC's regulations. The usual pattern is for items or services to be developed, produced, and sold as a result of demand on the part of consumers, with regulations following. The usual pattern is now upside down.

While a number of equipment supply issues appear to be nearly resolved, getting compliant handsets to consumers remains a problem. Even when such handsets are ready, the fact that they must be able to perform new functions related to conveying customer location information will make them more expensive, at least initially.



Steve Pastorkovich

To make matters worse, the economic slowdown has hit handset makers hard. Many have experienced big drops in stock prices, difficulty financing new projects, and the need to lay off thousands of workers. This environment is hardly conducive to developing new products in response to regulations, rather than to consumer demand.

To complicate the problem, carriers are subject to the FCC's jurisdiction, but manufacturers are not. Manufacturers cannot be fined for failure to produce Phase II-compliant products. If wireless carriers fail to meet Phase II deployment deadlines, however, they could be subject to fines (and even, at least in theory, loss of their licenses). The Phase II extensions granted by the Commission merely reflect reality.

Fortunately, the Bush administration is stepping in to assist with reasonable deployment. Transportation Secretary Norman Y. Mineta has initiated a program to establish advisory bodies composed of public safety officials, state and local policy-makers, and industry representatives.

The secretary's initiative will help facilitate smoother interaction among all interested par-

ties, reducing confusion and making it clearer what is expected from each. This kind of cooperative approach is far more effective than holding the prospects of fines over the heads of carriers for failure to deploy unripe technology.

CALEA Also Problematic

While federal officials are attending to E911 challenges, there are other examples of regulations that may be a bit ahead of their time. Complying with wiretap rules crafted to implement the Communications Assistance for Law Enforcement Act (CALEA) of 1994 has proved problematic for wireline and wireless carriers alike.

CALEA predates the recent expansion of law enforcement powers found in the antiterrorism Patriot Act by several years, yet fulfilling the law's mandates has been mired in legal and technical delays.

Part of the problem lies with difficulties involving tracking data packets used for voice communications, a nascent technology that satellite carriers, among others, hope to deploy widely. A number of carriers—landline, wire-

FCC SETS DEADLINES FOR MOVE TO '911' CALLING

The FCC has adopted deadlines for carriers to implement "911" as the national number for emergency services. Under rules the Commission released recently, most carriers will have nine months to complete the transition in areas where callers can't yet reach emergency service operators by dialing 911.

The action was part of the latest steps the FCC is taking to implement provisions of the Wireless Communications and Public Safety Act of 1999. In 2000, the FCC designated 911 as the nationwide emergency number for wireline and wireless services and sought suggestions on time frames for implementing 911 service in areas where it wasn't yet available. In response, carriers requested more time to upgrade their systems to implement "911" dialing, but public safety groups called for speedier implementation.

In its latest action, the FCC most gave carriers nine months to transition to routing "911" calls to a public safety answering point (PSAP). It allowed calls to be routed to a local emergency authority or "statewide default point" in areas where a PSAP has not been designated. The FCC also said it would require carriers to file two transition reports on 911 implementation.

The FCC took the actions in a fifth report and order in Common Carrier docket 92-105, a first report and order in Wireless Telecommunications docket 00-110, and a memorandum opinion and order on reconsideration in CC docket 92-105 and WT docket 00-110. "These actions will make emergency dialing for consumers traveling across the country simpler, will assist carriers in delivering 911 calls more promptly, and thus will improve the response of public safety entities and emergency services personnel in their efforts to save lives," the Commission said.

less, or satellite—that hope to use data packets for voice service may find that CALEA compliance issues will further complicate an already difficult challenge.

There is also the matter of local number portability (LNP) for wireless carriers. Providers in the 100 largest metropolitan statistical areas (MSAs) are scheduled to implement LNP by Nov. 24, although Verizon Wireless has asked the FCC not to enforce this deadline. This is less a technical issue than a marketplace concern.

The theory behind mandating wireless LNP is that consumers will be more inclined to switch providers if they can take their phone number along when they switch carriers. Policy-makers, in their efforts to promote competition, want to do more than just make it easier for consumers to change their wireless provider. Despite claims of “technological neutrality,” regulators want to further help wireless carriers go beyond providing a mere supplement to traditional landline services and become a full-fledged replacement.

But the wireless industry is not eager for this regulatory boost. LNP is expensive, and the costs must necessarily be passed on to consumers. Sometimes, Washington appears determined to bring competition to consumers,

no matter how much the consumers will have to pay to get it. Yet competition in the wireless sector has been thriving for years, at least in part because of lower regulatory costs.

Some consumers have dropped their landline phones in favor of mobile phones because costs have come down enough to make it feasible for them to do so. Many more have adopted wireless service as a supplement for the same reason and have no expectation of keeping their wireless phone number in the event they switch providers. “Churn” rates indicate that price, not number portability, is the prime concern of consumers.

Government, at times, has reasonable goals that lead it to place demands on wireless carriers that may be out of step with commercially available technology. Well-intentioned as the goals may be, consumers must ultimately pay the costs of implementation.

Requirements such as LNP, which are out of synch with the marketplace, are harder to justify. Higher regulatory costs deprive carriers of some of their flexibility to provide consumers with service at attractive prices. Policy-makers should not reduce this flexibility lightly.

(Steve Pastorkovich is a telecommunications policy analyst in Washington, D.C.)

Regulatory Front

FCC Won't Adopt Rules To Clear Channels 52–59

By Paul Kirby

The FCC has decided against adopting specific rules to spur private, voluntary band-clearing agreements between wireless carriers and TV broadcasters in the lower portion of the 700 megahertz band (channels 52–59).

Instead, the agency plans to consider on a case-by-case basis whether such band-clearing agreements are in the public interest. In 2000, the Commission established a “rebuttable presumption” that such agreements were in the

public interest in the upper portion of the band (channels 60–69), although individual accords still need the FCC’s approval (*TRW*, July 6, 2000). That move drew criticism from some members of Congress. The FCC had proposed extending those policies to channels 52–59.

The FCC last month adopted a report and order in General docket 01-74 establishing flexible allocation and service rules for the 48 MHz of spectrum in the lower portion of the 700 MHz band. The spectrum is being reclaimed from TV broadcasters as part of their transition to digital TV (DTV).

The allocation permits fixed and mobile services in the band but retains the existing

broadcast allotment for both new services and existing services during the DTV transition. Low-power TV and TV translator stations will be permitted to retain secondary status in the band after the transition. The flexible allocation rules permit carriers to use the technology of their choice.

Congress has directed the FCC to license the lower portion of the 700 MHz band by Sept. 30. The bulk of the spectrum, however, isn't expected to become available until much later. Under the DTV transition, broadcasters have until 2006 to return their analog frequencies, or until 85% of the households in their markets can receive DTV signals. At the end of the transition, all broadcasters will operate in the "core" DTV broadcast spectrum in channels 2-51.

The order establishes technical criteria to ensure that incumbent TV operations are protected from interference during the transition period. It dismisses pending petitions for new analog allotments in channels 52-59 and provides a 45-day window for modification of pending applications for new analog construction permits.

The lower portion of the 700 MHz band will be licensed by geographic areas. The Commission has decided to divide the 48 MHz of spectrum into three 12-MHz blocks (each having a pair of 6-MHz segments), two 6-MHz blocks of contiguous, unpaired spectrum.

Two of the three 12-MHz blocks and the two 6-MHz blocks will be licensed on a regional basis using six Economic Area Groupings (EAGs). The final 12-MHz block of paired spectrum will be licensed through 734 smaller metropolitan statistical areas and rural service areas.

"The use of large and small service areas accommodates both nationwide and regional users as well as small and rural carriers," said Michael Rowan, an attorney-adviser in the Commercial Wireless Division of the FCC's Wireless Telecommunications Bureau.

Several Commissioners said they were pleased by the use of smaller service areas for a portion of the spectrum, noting that rural carriers had sought them in order to gain access to 700 MHz band spectrum.

OPPONENTS OF SDARS REPEATERS TARGET INTERFERENCE

Wireless service providers and broadcasters are urging the FCC to reject a proposal by satellite digital audio radio service (SDARS) operators regarding how to define authorized transmission by terrestrial repeaters. They suggested that the Commission should place more stringent requirements on SDARS repeater licensees regarding interference with broadcast and wireless service licensees.

The opponents of the SDARS operators' proposal were responding to a November notice of proposed rulemaking in International docket 95-91. In it the FCC proposed that SDARS operators be allowed to deploy and operate terrestrial repeaters to provide service to locations that cannot receive signals directly from satellites. The FCC also proposed an 18-month period during which SDARS operators would be required to compensate wireless communication service (WCS) operators for the cost of protecting their systems from harmful interference caused by the repeaters.

In its comments filed with the FCC last month, the National Association of Broadcasters again called on the FCC to protect all incumbent services from blanketing interference caused by SDARS terrestrial repeaters. To accomplish this goal, said NAB, the location and operating specifications of all such repeaters must be disclosed by the SDARS operators and made part of the public record.

The Wireless Communications Services Coalition echoed NAB's opposition to the proposal in the rulemaking notice. It said a proper resolution of the issue would "allow both WCS and SDARS licensees to make productive use of their spectrum as authorized by their licenses." The coalition represents AT&T Wireless Services, Inc., BellSouth Corp., Verizon Wireless, WorldCom, Inc., Metricom, Inc., BeamReach Networks, Inc., and the Wireless Communications Association-International.

Commissioner Michael J. Copps said the Commission's action "balances two important goals: promoting the transition to digital television and establishing a pathway to making channels 52–59 available for new services as Congress instructed us to do."

In deciding against adopting a presumption that band-clearing agreements in channels 52–59 should be approved, Commissioner Copps said "we come down squarely on the side of a public-interest review of each case rather than letting purely commercial transactions determine the future of this critical public spectrum."

Explaining the decision not to adopt specific band-clearing measures for channels 52–59, FCC officials said there were a number of differences between that spectrum and channels 60–69. In the upper channels, there are far fewer incumbent operators, Congress has expressly directed the FCC to clear those frequencies, and there's a need to free channels allocated to public safety systems, said James D. Schlichting, deputy chief of the Wireless Telecommunications Bureau.

There are about 100 analog and 165 DTV stations in channels 52–59—about four times more incumbents per channel than there are in channels 60–69, FCC officials said.

Thomas J. Sugrue, the bureau's chief, said officials would use the same criteria when determining if band-clearing measures in channels 52–59 are in the public interest as they would use with channels 60–69, even without the presumption that such accords are in the public interest.

Mr. Sugrue acknowledged that licensing the lower 700 MHz spectrum by Sept. 30 was "a daunting task. It's a rush job . . . but the law is there, and we're proceeding to do it." The Rural Telecommunications Group praised the FCC's decision to license 12 MHz of the spectrum by RSAs and MSAs.

But Thomas E. Wheeler, president and chief executive officer of the Cellular Telecommunications & Internet Association, complained that the Commission "continues to labor under the conflicting constraints of the congressionally mandated auction deadline of September 2002 and the sweetheart deal that allows the current incumbents to squat on this valuable and underutilized national resource.

"Congress must find the courage to free this spectrum from infomercials, reruns, and home shopping networks so it may be made available to wireless consumers for calls home, to the office, or to '911.'"

Private Wireless Industry Calls 800 MHz Plan 'Disaster'

By Paul Kirby

The private wireless industry says an 800 megahertz band realignment plan proposed by Nextel Communications, Inc., would be an "unmitigated disaster," disrupting critical operations and forcing companies to pay billions of dollars to relocate to other frequencies.

Nextel said its realignment proposal, outlined in a recent white paper submitted to the FCC, would address interference issues between commercial mobile radio service (CMRS) providers and public safety systems in the 800 MHz band and would double the amount of spectrum allocated to public safety agencies (*TRW*, Dec. 6, 2001).

But in a recent letter to FCC Chairman Michael K. Powell, seven organizations and companies representing private wireless users urged the Commission to explore other options to reduce interference to public safety systems.

Those signing the letter represent a vast array of private wireless operators, including utilities, railroads, pipeline operators, petroleum and chemical companies, airlines, manufacturers, package-delivery carriers, and agricultural interests.

"As the Commission develops its initial proposals on this matter, it must understand that FCC adoption of the proposals contained in the Nextel white paper would be an unmitigated disaster from an operational and financial standpoint for America's industrial, transportation, and utility sectors," they said.

"If adopted as Nextel proposes, this interference solution will disrupt the provision of mission-critical communications and impose billions of dollars of costs on American businesses to relocate operational communications systems that are not causing any interference to public safety operations."

While the parties said they are “very supportive of public safety’s need for interference-free communications,” they said that “alternative solutions must exist that do not pose the same hardships on private wireless users.

“We therefore urge the Commission to fully explore remedies such as filtering and greater reliance on frequency coordination to better address what, to date, has been an interference problem caused principally by Nextel,” they added. “While frequency swaps may be necessary to resolve interference situations, we are not convinced that private wireless systems must be unilaterally evicted from the 800 MHz band.”

The organizations complained that the billions of dollars in relocation costs their industry would incur as a result of Nextel’s plan would “seriously harm” efforts to step up the protection of the nation’s critical infrastructure in the wake of the Sept. 11 terrorist attacks.

Writing the letter were representatives of Aeronautical Radio, Inc., the American Petro-

leum Institute, the American Association of Railroads, Forest Industries Telecommunications, the Industrial Telecommunications Association, the United Telecom Council, and MRFAC, Inc.

Under the Nextel plan, the current regime of interleaving CMRS and public safety operations in the 800 MHz band would be replaced by a contiguous 20 MHz block of spectrum for public safety systems—more than double its current allocation of 9.5 MHz of noncontiguous spectrum—and a 16 MHz block for digital SMR (specialized mobile radio) networks.

Nextel would exchange 16 MHz of its spectrum in the 700 MHz, 800 MHz, and 900 MHz bands for the same amount of spectrum in the 800 MHz and 2.1 gigahertz bands. Nextel pledged to contribute up to \$500 million to cover the relocation costs of public safety incumbents, including the expense of retuning equipment.

Business and industrial/land transportation (B/ILT) licensees currently using the new pub-

STATES TO CONSIDER HANDHELD PHONE BANS AGAIN

After passage of the first handheld driver mobile phone ban in New York, state and local legislators are gearing up to consider similar prohibitions this year. Legislators in 43 states, the District of Columbia, and Puerto Rico introduced about 140 bills related to the use of mobile phones and other electronic devices by drivers in 2001, according to Matt Sundeen, a senior policy specialist for the National Conference of State Legislatures.

But only New York adopted a law banning the handheld use of mobile phones in vehicles (*TRW*, July 12, 2001). Five other states adopted less-restrictive measures, he said. Mobile phones’ safety benefits, which were highlighted by the Sept. 11 terrorist attacks, may discourage state legislators from introducing measures, he said. “I think a lot of that backlash [against mobile phones has] diminished,” he said. “I think you’re going to see legislation. How extensive it’s going to be and whether anything’s going to pass remains to be seen.”

But legislators in a number of states are hoping their measures will become law. Arizona state Sen. Tom Smith (R.) told *TRW* he planned to sponsor, for a third time, a similar “narrowly focused” bill this year that will include an exemption for emergencies.

Wyoming state Rep. Floyd A. Esquibel (D.) has prefiled a similar bill. First-time violators could face a maximum \$200 fine, up to 20 days in jail, or both. A second offense within one year could yield a maximum \$300 fine, up to 30 days in jail, or both. In Kentucky, state Reps. Tom Burch (D.) and Reginald Meeks (D.) have prefiled bills that would authorize fines up to \$100 for using handheld wireless phones while driving.

And Delaware state Rep. Joseph E. Miro (R.) told *TRW* he would introduce legislation to restrict drivers’ use of wireless phones. Rep. Miro said his draft bill, which is tailored after New York’s wireless phone law, would have a 30-day phase-in period for public safety officials to advertise the change and pull over motorists to issue warnings. After the phase-in period, offenders would face \$100 fines for each violation.

lic safety spectrum could relocate to 700 MHz and 900 MHz spectrum licensed to Nextel or remain in their current frequencies and operate on a secondary, noninterference basis.

The FCC plans to release a notice of proposed rulemaking to solicit comments on Nextel's plan by mid-January, according to Peter A. Tenhula, Mr. Powell's senior legal adviser. Mobile satellite service operators and other terrestrial wireless providers also have raised concerns about the plan.

"We look forward to further developing the issues and discussing them in the context of a rulemaking," Larry Krevor, Nextel's vice president-government affairs, told *TRW* in response to the letter from the private wireless industry.

Mr. Krevor said Nextel would be unwilling to pick up any of the relocation costs of private wireless users, noting that it would face substantial costs of its own to retune equipment. "We're not in the business of paying for everybody's move," he added. "We think we should bear our retuning costs [and] they should bear their retuning costs."

He stressed that the goal of the proposal was to reduce interference to public safety systems and provide them with more spectrum, adding that the carrier had pledged funds to cover their relocation costs because "their access to resources are more limited."

FCC Plans February Ruling On Ultrawideband Devices

Lobbying by parties on both sides of the ultrawideband (UWB) issue is expected to grow more furious in the coming weeks with FCC action in the proceeding scheduled for next month.

FCC Chairman Michael K. Powell said last month he agreed to defer action on authorization of UWB devices under part 15 of the agency's rules from December to February "in deference" to Commerce Secretary Donald L. Evans and others "who have insisted [that] additional coordination is necessary with respect to interference issues. I do so reluctantly, but understand, based on his commitment, that we will be able to resolve these issues and it will be

considered at the February agenda meeting." Next month's meeting is scheduled for Feb. 14.

Mr. Evans asked the FCC to postpone action on authorizing UWB devices for 60 days, saying more time was needed to analyze the effect the technology could have on critical government systems and other safety-of-life operations such as the Global Positioning System (*TRW*, Dec. 6, 2001). He noted that the departments of Defense and Transportation had also sought a 60-day delay.

DoD Deputy Secretary Paul D. Wolfowitz told Mr. Evans in a recent letter that his department needed more time to review the draft UWB rules. He said he was worried that mass-marketed UWB devices could hurt the GPS and other systems critical to national security.

DoT Secretary Norman Y. Mineta and Daniel S. Goldin, then administrator of the National Aeronautics and Space Administration, wrote Mr. Evans last summer to express concern about the interference of UWB devices. More recently, Mr. Mineta has been "very engaged" on the issue, worrying about UWB interference to key aviation systems, an industry source said.

A coalition of aviation, GPS, satellite, and wireless organizations and companies also has complained that UWB devices would hurt its operations and has asked the FCC to issue a further notice in the proceeding in Engineering and Technology docket 98-153 before authorizing them under part 15 of its rules. The coalition has also asked the FCC to prohibit commercial UWB devices from using frequencies between 1 and 6 gigahertz.

Deputy Assistant Commerce Secretary Michael Gallagher, who is also deputy administrator of the National Telecommunications and Information Administration, praised the FCC's decision to defer action on the item until February. He told *TRW* his agency would continue to work closely with the FCC and other federal agencies to address interference concerns.

"We will continue to work quickly and hard to achieve the proper balance between protecting the national security and meeting 21st century technology needs," Mr. Gallagher said in a statement.

Mr. Gallagher is in charge of the UWB issue at the Commerce Department because NTIA Administrator Nancy J. Victory has recused herself because of work her husband has done on behalf of Time Domain Corp., an UWB company. The FCC is working on the proceeding jointly with NTIA because frequencies used by the federal government are among those that could be affected by UWB operations.

Martin Rofheart, president and chief executive officer of XtremeSpectrum, Inc., a UWB company, said he was “disappointed” that the FCC decided to put off action in the proceeding. But he said the company “shares the objective of both the FCC and the Department of Commerce to both protect existing spectrum users and to allow for the deployment of this exciting new technology.”

Charles Trimble, chair of the U.S. GPS Industry Council, credited the DoT and FAA with persuading the FCC to delay the proceeding. “This was a positive move,” he said, adding that there wasn’t a consensus on which bands should be off limits to UWB devices.

Some observers expect DoD to prevail in its argument that no UWB interference can be permitted to its systems—especially while the nation is at war.

One source predicted a “3G scenario,” referring to regulators’ decision to spare the bulk of DoD frequencies from reallocation for third-

generation wireless services in the wake of the Sept. 11 terrorist attacks (*TRW*, Oct. 18, 2001). “They really have a lot of strength,” the source said of military brass.

FCC Reallocates 27 MHz For Nongovernment Uses

The FCC has reallocated a number of small blocks of federal government spectrum, totaling 27 megahertz, for new, “flexible” services.

“These actions will benefit consumers by permitting and encouraging the introduction of new and innovative wireless technologies,” the FCC said. The agency released a “report and order and memorandum opinion and order” last week in Engineering and Technology docket 00-221.

“Many of the actions taken in this order will be further implemented with a forthcoming notice of proposed rulemaking on appropriate service rules for the reallocated frequency bands, some of which must be licensed by auction by September,” the FCC said. The Omnibus Budget Reconciliation Act of 1993 and the Balanced Budget Act of 1997 required the Commission to transfer the blocks from government to nongovernment use.

The 27 MHz of reallocated spectrum is at 216–220 MHz, 1390–1395 MHz, 1427–1429

FCC ALLOWS TECH-SPECIFIC, SERVICE-SPECIFIC ‘OVERLAYS’

In an effort to maximize efficiency in allocating phone numbers under the North American Numbering Plan, the FCC has decided to lift the ban on technology-specific and service-specific “overlay” area codes. But states would have to obtain Commission approval in each case. In a third report and order and second order on reconsideration in Common Carrier dockets 96-98 and 99-200 adopted last month, the FCC adopted criteria for deciding whether a given state request for a technology-specific overlay (TSO) or service-specific overlay (SSO) passes muster.

According to a Commission spokesman, the states would still have to require 10-digit dialing for all local calls in any area affected by an all-service overlay but would not necessarily have to do so for a TSO. Five years ago, the FCC prohibited TSOs and said states could adopt all-service overlays only if they required 10-digit dialing. The Commission said that under the new TSO criteria, it would “favor” proposals that included 10-digit dialing, but it would not require it.

The order “clarified that all carriers in the top 100 Metropolitan Service Areas (MSAs) must become local number portability (LNP)-capable.” A Commission spokesman said the FCC’s statement referred to whether a carrier in the top 100 MSAs must become LNP-capable even if it had not received a request from a competing carrier to do so.

MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz bands.

The reallocation preserves the primary status of wireless medical telemetry services and elevates low-power radio services in the 216–217 MHz band, which include auditory assistance and law enforcement applications, to primary status, the FCC said. The FCC said its decision to reallocate the spectrum continued implementation of a 1999 agency spectrum policy statement on the matter.

The Commission reallocated the 216–220 MHz band to the fixed and mobile services on a coprimary basis. The low-power radio service moves to primary status in the 216–217 MHz band while preserving the existing automated maritime telecommunication system allocation in the 218–219 MHz band, which operates on a primary basis, the FCC said.

Incumbent telemetry operators will be grandfathered on a secondary basis in the 216–220 MHz band. New secondary telemetry operations will be allowed in the 217–220 MHz portion of the band.

The FCC also allocated the 1390–1392 MHz band for uplinks in the fixed-satellite service and the 1430–1432 MHz band for FSS downlinks on a primary basis. The frequencies are limited to feeder links used by “Little LEO” (low Earth-orbit) satellites and require the adoption of a similar international allocation, the agency said. Other fixed and mobile service providers will be allowed to share the 1390–1392 MHz frequencies on an unpaired basis.

The wireless medical telemetry service was shifted from 1429–1432 MHz to 1427–1429.5 MHz at the request of the American Hospital Association. The agency confirmed the secondary status of nonmedical telemetry systems in this band but elevated telemetry to primary status in the 1429.5–1432 MHz band.

The 1392–1395 MHz, 1432–1435 MHz, 1670–1675 MHz, and the 2385–2390 MHz bands were reallocated on a coprimary basis for fixed and mobile services, except aeronautical mobile services.

Industry groups quickly praised the FCC’s move to make more spectrum available. The Time Division Duplexing coalition said the move “is an important step toward encourag-

ing technologies like TDD that require only a relatively small band for bidirectional broadband wireless communications.”

The decision is “a step forward for innovative spectrally efficient wireless technologies,” said Martin Cooper, cofounder and chief executive officer of ArrayComm, Inc. “This demonstrates the FCC’s commitment to implementing a new U.S. spectrum management and allocation policy.”

Environmentalists Suffer Setbacks to Challenges

Several environmental groups have suffered setbacks in their attempts to get the FCC to overhaul its environmental rules. The defeats have come in two recent decisions by the agency.

In an order released last month (rulemaking 9913), the FCC affirmed its environmental rules as they apply to submarine cables, fiber-optic lines, and radio frequencies that require the construction of wireless communications towers. The rules ensured that undertakings under its jurisdiction do not harm the environment, the Commission said.

The order responded to a petition for rulemaking filed in May 2000 by Public Employees for Environmental Responsibility (PEER).

PEER argued that the FCC’s environmental rules contradicted the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA). Those statutes require federal agencies to review the effects of their actions on the environment and on historic properties.

It asked the Commission to require applicants for all FCC actions related to submarine cables, fiber-optic lines, and spectrum requiring towers to file an environmental assessment (EA) or an environmental-impact statement. Such filings are currently required only for major actions that may affect the environment.

PEER also asked the FCC to conduct a joint rulemaking with other federal agencies and to determine if it needed an Office of Environmental Compliance.

The FCC said its current environmental rules implementing NEPA are consistent with the law and said PEER “offers no rationale for treating all actions as actually or potentially damaging to the environment.” It said the proposal “would impose unnecessary and substantial delays in preparation and processing of applications, as well as significant financial and administrative burdens on both applicants and the Commission.”

In the second decision, the Commercial Wireless Division of the FCC’s Wireless Telecommunications Bureau last week rejected requests by two environmental groups that it deny 29 applications for antenna authorizations.

In a memorandum opinion and order, the division said Friends of the Earth and the Forest Conservation Council had failed to show that they had standing to challenge the applications because the petitions they filed “are speculative and do not show how the construction of these towers would affect the interests of any identified person.”

In most cases, the groups used “speculative, general allegations” to challenge applications rather than addressing issues specific to each project, it added.

The groups had launched a broad attack on the FCC’s antenna-licensing process, arguing that the agency failed to weigh the environmental effect of antenna projects before approving them (*TRW*, June 21, 2001). The groups said the EAs prepared for those and other projects didn’t comply with the NEPA and FCC rules adopted to implement that law.

The division said that EAs had been prepared for the challenged projects and said complaints about the agency’s overall rules should be directed toward a request for a rulemaking, rather than be raised in objections to individual antenna applications.

Verizon Wireless Withdraws From Priority-Access Effort

Federal officials say they are still hopeful that national security and public safety personnel can get priority access to mobile phone networks during emergencies. Their optimism comes despite a decision by Verizon Wireless to withdraw a request for a waiver of the FCC’s rules that would have allowed it to quickly provide such access in three cities.

Spokespersons for the National Communications System (NCS), which comprises 22 federal departments and agencies, had said they were wrapping up the details of a contract with Verizon Wireless to provide priority access service (PAS) to 2,000 federal, state, and local officials in Washington, New York City, and Salt Lake City, site of the Winter Olympics (*TRW*, Nov. 15, 2001). The contract called for deployment within 60 days of the contract’s being awarded.

Over the longer term, NCS plans call for nationwide PAS deployment by one or more carriers to at least 50,000 officials by year-end.

But negotiations to finalize the short-term agreement between the government and Verizon

COURT NIXES TELEDESIC PROTEST OF 18 GHz FS RELOCATION PLAN

The U.S. Court of Appeals in Washington has rejected Teledesic LLC’s complaints that incumbent spectrum users reap windfalls when they are relocated to new bands. In a Dec. 28, 2001, decision in *Teledesic LLC v. FCC* (case 00-1466), a three-judge panel found that the FCC had created “reasonable and permissible” rules to relocate terrestrial fixed service operators from the 18 gigahertz band.

In arguments presented Nov. 5, 2001, before Senior Judge Stephen F. Williams, Judge A. Raymond Randolph, and Judge Harry T. Edwards, attorneys for Teledesic said their client had to pay too much to relocate incumbent spectrum users because FCC rules allowed the incumbents to demand new equipment.

Teledesic had raised two other objections involving exceptions for low-power stations and the exemption of stations in the 19.26–19.3 GHz band. But the International Bureau addressed those issues in a reconsideration order issued the day before oral arguments in the case were heard.

Wireless stalled, in part because of concerns about a backlash from subscribers who might not be able to make calls during emergencies because channels would be devoted to those with priority access, according to a source.

In a filing with the Commission, Verizon Wireless said it had decided to “respond to the government’s emergency communications needs in ways that do not require FCC action at this time.”

The carrier noted that the industry was working with NCS “on a more comprehensive, industry-wide solution” to provide PAS. “That joint government-industry effort may yield a PAS solution that will meet all the requirements of” the FCC’s PAS rules, it said in the filing.

Verizon Wireless also said it would “respond to specific emergency communications needs of the government by taking actions to increase its network capacity and the ability of people to place calls,” including deploying portable cell sites, rerouting traffic, and distributing handsets to public safety workers during emergencies. It noted it had taken such actions after the Sept. 11 terrorist attacks and during other emergencies.

Brenton C. Greene, NCS’s deputy director, said that while federal officials “are disappointed that Verizon Wireless has withdrawn its agreement to develop an immediate wireless priority access solution, we are continuing to move toward a fully FCC-compliant priority access process.”

Mr. Greene said NCS was “working with major providers toward an alternate pilot project that will provide priority access to critical decision makers for national security and emergency preparedness while eliminating negative impacts on customer access to wireless networks.” He added that NCS is “very happy with the industry efforts toward establishing a nationwide wireless priority access service by the end of 2002.”

VoiceStream Wireless Corp. also had asked the FCC to temporarily waive its PAS rules so it could offer PAS immediately in Washington, New York City, and other cities it serves. Brian T. O’Connor, VoiceStream’s vice president-regulatory and legislative affairs, said the company planned to continue pursuing its waiver.

Industry Asks FCC To Ease E911 Compliance Standard

The FCC should ease the compliance standard it plans to apply to wireless carriers in the deployment of Phase II enhanced “911” (E911) services, according to several companies and trade groups.

Instead of employing a “strict liability” standard, the Commission should consider whether factors outside the carriers’ control were responsible for any missed deadlines in deploying Phase II services, such as delays in the delivery of automatic location identification (ALI)-capable handsets and technologies, the industry parties say.

But three major public safety groups disagreed with carriers’ assessments that they were being held to such a strict standard and that the agency was prejudging their compliance with their Phase II deployment schedules.

The industry and public safety representatives filed comments recently in Common Carrier docket 94-102 in response to petitions filed by Verizon Wireless, Cingular Wireless LLC, and Nextel Communications, Inc., and Nextel Partners, Inc. The petitions sought reconsideration of Commission orders that gave them additional time to deploy Phase II services (*TRW*, Dec. 6, 2001).

The orders, approved in October 2001, establish individual deployment schedules for the five nationwide wireless carriers (*TRW*, Oct. 18, 2001). A sixth national carrier, VoiceStream Wireless Corp., received a waiver in 2000 (*TRW*, Sept. 21, 2000). The original deadline to begin deploying Phase II services was Oct. 1. Phase II deployment enables public safety call centers to identify callers’ locations much more precisely than Phase I.

In their petitions, Verizon Wireless, Cingular, and Nextel had complained that the language of the E911 orders granting them waivers indicated that the FCC had adopted the strict liability standard for future compliance. Specifically, they objected to the fact that the Commission said that they would be deemed noncompliant and referred to the Enforcement Bureau for failing to meet all their Phase II deployment deadlines.

“The wireless industry is committed to meeting benchmarks to provide Phase II E911 service to subscribers, but carriers can only do as much as the currently available wireless location technology permits them to do,” the Cellular Telecommunications & Internet Association told the FCC. “The Commission’s apparent ‘strict liability’ determination violates Commission rules that afford carriers the opportunity to rebut a finding of noncompliance.”

In joint comments, the National Emergency Number Association, the Association of Public-Safety Communications Officials-International, and the National Association of State Nine One One Administrators said they opposed the carriers’ petitions. The groups said that the carriers were not being held to a strict liability standard for Phase II compliance and the FCC was not prejudging how it would assess such compliance in the future.

Business & Finance

Winstar Acquisition Fuels Lofty Aspirations at IDT

IDT Corp. is buying Winstar Communications, Inc., a bankrupt competitive local exchange carrier, for \$42.5 million. “Our intent is to turn this into the greatest telecom company in the world,” Howard Jonas, IDT’s chairman, proclaimed in announcing the transaction last month.

“We intend to become as large or larger” than the Bell companies. “This is an unbelievable deal,” he added. “It might not top the Dutch settlers’ buying the island of Manhattan for \$24, but it comes pretty close.” Newark, N.J.-based IDT will pay \$30 million in cash and \$12.5 million in stock.

IDT already has some long distance assets and owns a piece of Net2Phone, Inc., a provider of Internet telephony. It once specialized in prepaid calling cards and “callback” services that enabled users to make inexpensive international calls. But more recently it has been looking for last-mile assets. Last year it acquired stakes in two other troubled CLECs, ICG Communications, Inc., and Teligent, Inc. The sellers—Hicks, Muse, Tate & Furst and Liberty Media Corp.—were looking to unload unprofitable investments.

Winstar had been headed toward liquidation before IDT arranged an 11th-hour deal to buy the CLEC’s fixed-wireless assets. With other potential buyers showing little interest, or failing to make good on their offers, IDT’s bid won approval from the U.S. Bankruptcy Court for the District of Delaware. The transaction still requires FCC approval.

In other bankruptcy news, Arch Wireless, Inc., and several subsidiaries have filed for bankruptcy protection after reaching an agreement with a majority of secured creditors on a deal to restructure the company and convert \$1.6 billion of long-term debt into stock and \$300 million of new debt. The paging and messaging service company’s voluntary Chapter 11 filing came just days before a Dec. 10 deadline for the firm to respond to an involuntary bankruptcy petition made against the company’s Arch Wireless Communications unit.

Intent on Generating Profits, Motorola Plans More Layoffs

Motorola, Inc., is planning another round of layoffs as it tries to return to profitability in the face of a grim climate in which 2002 revenues will be as much as 10% lower than 2001 totals. The latest moves will cut 9,400 employees adrift over the next year and shutter some of Motorola’s semiconductor manufacturing plants.

The reductions are intended to save \$865 million in costs this year and \$1.1 billion per year thereafter. When the latest job cuts are completed, Motorola will have let go about one-third of its workforce, measured from the peak of 150,000 employees in August 2000. Among those cut will be nearly 20% of Motorola’s top 600 executives.

The reductions are necessary, Motorola said, if the firm is to meet Wall Street’s 2002 consensus earnings of \$0.15 per share on a pro forma basis in the face of reduced sales. Motorola expects to be profitable this year. □